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October 23, 2002

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 2002

RECEIVED

OCT 23 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Informal Objection to Assignment Applications; and
Petition for Rulemaking and Request for Initiation of § 403 Proceeding
Into Character of WorldCom, Inc. and Other Commission Licensees
Certificate of Service**

Dear Ms. Dortch:

Transmitted herewith on behalf of the Office of Communication of the United Church of Christ, Inc. ("OC-UCC") is a Certificate of Service to be associated with the Informal Objection to Assignment Applications ("Informal Objection") and the Petition for Rulemaking and Request for Initiation of § 403 Proceeding Into Character of WorldCom, Inc. and Other Commission Licensees ("Rulemaking Petition") that were filed with the Commission by OC-UCC on October 15, 2002. Due to an inadvertent administrative error, true copies of the Informal Objection and Rulemaking Petition are being served by Federal Express (Standard) on WorldCom, Inc. and its subsidiaries, as identified on the Certificate of Service, for delivery on October 24, 2002.

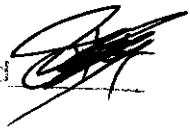
Should any questions arise concerning this matter, please contact this office directly.

Sincerely,


Gregg P. Skall

Enclosures

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CERTIFICATE OF SERVICE

I, Dina Etemadi, a secretary in the law firm of Womble Carlyle Sandridge & Rice, PLLC, do hereby certify that true copies of the attached "Informal Objection to Assignment Applications" and "Petition for Rulemaking and Request for Initiation of § 403 Proceeding Into Character of WorldCom, Inc. and Other Commission Licensees" were sent this 23rd day of October, 2002 by Federal Express (Standard), to the following:

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8003 Westpark Drive, 2nd Floor
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CS Wireless Systems
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McLean, VA 22102
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MCI WorldCom Network Services, Inc.
2270 Lakeside Blvd. 42955/B82
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Attn: Bruce Deer

MCI WorldCom Communications, Inc.
2270 Lakeside Blvd. 42955/B82
Richardson, TX 75082
Attn: Laura Birkelbach



Dins Etemadi

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

OCT 23 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
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Petition for Rulemaking)
To Establish Standards of Conduct)
For Telecommunications Providers)
And)
Request to Initiate Section 403 Proceeding)
Into Activities of WorldCom, Inc. and)
Other Commission Licensees)

FCC File No. _____

To: The Commission

PETITION FOR RULEMAKING
AND REQUEST FOR INITIATION OF § 403 PROCEEDING
INTO CHARACTER OF WORLDCOM, INC. AND OTHER COMMISSION
LICENSEES

Office of Communication of the United Church of Christ, Inc.

Gregg P. Skall, Esq.
Howard J. Barr, Esq.
Its Attorneys

Womble Carlyle Sandridge & Rice
1401 Eye Street NW
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Washington, DC 20005
202-857-4441

October 15, 2002

[Date]

EXECUTIVE SUMMARY

Office of Communication of the United Church of Christ, Inc. (“OC-UCC.”) petitions the Federal Communications Commission (“Commission” or “FCC”) to establish new standards of conduct that will be required of all telecommunications providers that receive authorizations to operate from the Commission. The importance of the facilities and services provided by today’s telecommunications providers, described as the central nervous system of **our** society, which serves as the hub for virtually all commerce and public safety, and which further serve as a critical resource for our national defense, demands that the Commission establish specific business conduct standards applicable to those who benefit from its authorizations.

Traditionally, the Commission evaluates the character qualifications of applicants for FCC licenses by considering three classes of non-FCC misconduct : (1) adjudicated fraudulent statements to another governmental unit; (2) criminal convictions involving false statements **or** dishonesty; or (3) adjudicated violations of anticompetitive or antitrust laws in connection with station-related misconduct.’ Rather, these classes of misconduct require an applicant or licensee be caught, tried and convicted before the FCC can protect the public interest. By the time a court adjudicates the matter, the harm to the public is done and, therefore, they do not always provide the Commission with **an** adequate opportunity to identify those individuals or companies, like

ⁱ Policy Regarding Character Qualifications in Broadcast Licensing, *102 FCC 2d 1179, 1209-10 (1986)* (“Character Policy Qualifications’?”, modified, *5 FCC Rcd 3252 (1990)* (“Further Character Policy Statement”), recon granted in part *6 FCC Rcd 3448 (1991)*, modified in **part**, *7 FCC Rcd 6564, 6566 (1992)* (“Further Character Qualifications Modifications’?”).

WorldCom, that display a pattern of disregard not only for its rules and regulations, but basic business ethics.

The Commission has expanded its consideration of character qualifications when circumstances merit.² The flood of information now deluging the public and investigative government entities demonstrates that WorldCom (and potentially other Commission regulated entities) is not “possessed of the requisite propensity to obey the law.”³ The Commission must have a clear mechanism in place that will allow it to ferret out such propensities at the fore rather than the aft. OC-UCC., therefore, seeks Commission adoption of a code establishing benchmarks for behavior in the marketplace so as to offset the increased corporate power, influence and opportunity for fraudulent conduct that has arisen as a by-product of deregulation.

WorldCom merely serves as an example of the Commission’s need to act. Other carriers such as Qwest Communications and Global Crossing are also currently under investigation for accounting “irregularities.” These events mandate that standards be established for any individual or entity, empowered with the public’s trust for providing telecommunications services pursuant to FCC authorization.

OC-UCC. does not seek any punitive or adjudicative action against WorldCom. Rather, the petition is forward looking in that it seeks, through the requested rulemaking and § 403 inquiry, proactive (as opposed to retroactive) rules governing the conduct of the Commission’s

² Policy Regarding Character Qualifications in Broadcast Licensing **5 FCC Rcd 3252 (1990)**

³ Id.

regulatees. OC-UCC. seeks action that will affect the telecommunications industry as a whole and not merely one entity in that field.

OC-UCC. recognizes that it may appear to some that existing rules have proven sufficient to catch WorldCom – but that occurred only because, fortuitously, the company spiraled into bankruptcy, causing creditors, journalists and law enforcement authorities to take note and thus leading to the facts that have emerged. In that sense, in the words of former President Carter, the system was an “incomplete success.” WorldCom was stopped in time to stop further misconduct, but not in time to prevent the misconduct that has already happened and thus not in time to prevent great harm to the nation’s telecommunications ratepayers and consumers and to quite possibly the nation’s telecommunications infrastructure and security. It seems clear that new rules are needed to ensure that misconduct like WorldCom’s is prevented, or at least, caught early. Guidelines, such as those suggested, would be a prospective filter permitting the Commission to prevent potential future misconduct, and to catch any that does occur well before that misconduct spirals the company into bankruptcy and well before that misconduct presents a grave threat to the public and the nation.

The Commission is under a “duty to evaluate its policies [and rules] over time to ascertain whether they work”⁴ to ensure that the rules and policies it adopts are well founded in fact, and “should stand ready to alter its rule[s] if necessary to serve the public interest more fully.”⁵ OC-UCC. submits that the time is ripe for consideration of the actions requested herein.

⁴ FCC v. Nat’l. Citizens Comm. for Broad., 436 US. 775, 814 (1978)

⁵ FCC v. WNCN Listener’s Guild, 450 U.S. 582 603 (1981).

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In the Matter of)	
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Petition for Rulemaking)	
To Establish Standards of Conduct)	FCC File No. _____
For Telecommunications Providers)	
And)	
Request to Initiate § 403 Proceeding)	
Into Character of WorldCom, Inc.)	
As an FCC Licensee)	

The Office of Communication of the United Church of Christ, Inc. (“OC-UCC.”), pursuant to Section 1.401 of the Commission’s rules⁶ and Section 553(e) of the Administrative Procedure Act’, hereby respectfully submits this Petition for Rulemaking (“Petition”) requesting that the Federal Communications Commission (“Commission” or “FCC”) establish new standards of conduct that will be required of all telecommunications providers that receive authorizations to operate from the Commission. The facilities and services provided by the

⁷ 5 U.S.C. §§1001–1011 (1966).

nation's telecommunications providers serves ~~as~~ the hub for virtually all commerce, forms the foundation for much of our nation's public safety functions, and is a critical resource to our national defense. Reliable telecommunications facilities and services are essential to our personal and business lives and to the free flow ~~of~~ our nation's economy. Considering their importance, the Commission must establish specific business conduct standards to which those who benefit from its authorizations will be held accountable.

Recent events, such as the travesty perpetrated by WorldCom, Inc. and its subsidiaries ("WorldCom"), in which fraud and deceit were conducted to an outlandish extent, exemplifies how one FCC licensee's conduct can have far reaching effects on all aspects of the telecommunications industry, both nationally and internationally as well as on the economy as a whole. Unfortunately, WorldCom's conduct may be merely one example. Other carriers such as Qwest Communications and Global Crossing are also currently under investigation for accounting "irregularities." These events mandate that standards be established for any individual or entity providing telecommunications services pursuant to FCC authorization.

Accordingly, as will be shown, the Commission should immediately issue a Notice of Proposed Rulemaking seeking comment on the establishment of standards to which FCC licensees and regulatees should be subject. Additionally, in conjunction with the issuance of that item, the Commission should also initiate a §403⁸ investigation by which it may learn for itself the extent and nature of wrongdoing that has been enabled by its authorizations. With a complete record created in such an investigation, the Commission will have a catalogue of

⁸ 47 U.S.C. § 403.

wrongful and fraudulent practices that have crept into this uniquely important and vital field with which it may fashion rules that will not only withstand any subsequent judicial scrutiny, but serve to prevent any recurrence of such conduct.

I. STANDING

This Petition for Rulemaking is submitted pursuant to Section 4(e) of the Administrative Procedure Act (“APA”), 5 U.S.C. § 553(e), which provides that an agency “shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.” This section “requires agencies to receive and consider requests” for rulemaking.’ Section 553(3)(e) is implemented by §1.401(a) of the Commission’s Rules¹⁰ which permits “[a]ny interested person” to petition for the issuance of a rule or regulation.”

This Petition sets forth “the text or substance of the proposed rule[s]...together with all data deemed to support the action requested” and specifies “how the interests of OC-UCC. will be affected.”¹² After the submission of a petition for rulemaking in accordance with the foregoing, the Commission must assign it a file number and place it on public notice.¹³

OC-UCC. has assumed the role of speaker in the past on behalf of the nation’s telecommunications consumers, the telecommunications workforce, and the communities dependent on telecommunications enterprises and continues that tradition here. Since 1954, OC-

⁹ *Senate Judiciary Committee Print, June 1945, reprinted in Administrative Procedure Act: Legislative History, 79th Cong. 1944-46, S. Doc. No. 248, 79th Cong., 2d Sess. 11, 21 (1946)*

¹⁰ 47 C.F.R. § 1.401(a).

¹¹ Id

¹² Id § 1.401(c).

¹³ 47 C.F.R. § 1.403.

UCC. and its predecessor in interest within the United Church of Christ (“UCC”) has been a leading proponent of public participation in communications policy, and **of** diversity of ownership and employment in all industries subject to Commission regulation. Indeed, OC-UCC. essentially founded the modern public interest movement in the media and telecom industries.¹⁴

OC-UCC's decision to bring the issues in this petition to the Commission's attention harkens back to UCC's own history as the conscience **of** the communications industry. In 1955, UCC brought the first complaints against Jackson, Mississippi's rigidly segregated television stations, including Lamar Life Insurance Company's WLBT-TV, the NBC affiliate. WLBT displayed such contempt for its own audiences that the station would cut **off** the network feed when NBC's nightly news contained interviews with civil rights heroes like Thurgood Marshall. **After** the FCC repeatedly rejected UCC's complaints, the D.C. Circuit Court of Appeals ordered the FCC to hold a hearing, rejecting the Commission's theory that the way to cure corruption is to afford an unreconstructed wrongdoer an unsupervised chance to do **better**.¹⁵

When the Commission held a hearing so deficient that it was deemed “beyond repair,” the Court ran out of patience and vacated the license renewal **itself**.¹⁶ **As** this saga of desegregation was playing itself out, UCC petitioned the FCC for rules prohibiting employment

¹⁴ *Much of this history -- and what it meant for the television industry and the nation -- is detailed in Kay Mills, Changing Channels: The Civil Rights Case that Changed Television, (Civil Rights Forum on Communications Policy), 2000.*

¹⁵ Office of Communication of the United Church of Christ v. FCC, 359 F.2d 994 (D.C. Cir. 1966) (“UCC I”).

¹⁶ Office of Communication of the United Church of Christ v. FCC, 425 F.2d 543 (D.C. Cir. 1969) (“UCC II”).

discrimination and requiring broad recruitment.¹⁷ Since Commission adoption of those rules," many of the industries under FCC authority have made great strides in desegregating and in promoting equal opportunity. Intentional discrimination has not yet been wiped out, but that day may come soon.

Today, other forms of misconduct by FCC regulatees, in addition to discrimination, diminish the "rapid, efficient, Nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable charges" that all Americans are entitled to expect from their FCC regulated industries."

Thirty-six years after *UCC I*, another Jackson, Mississippi-based company tests the limits of the Commission's responsibility to protect the public against the intentional misconduct of regulatees. WorldCom's campaign of fraud has jeopardized the nation's telecommunications infrastructure, imperiled homeland security, and caused lasting damage to the credibility and thus the competitiveness **of** the telecom sector of the economy.

With communications and information technology representing one-sixth **of** our economy, it is difficult to imagine any corporate behavior that strikes more painfully at the heart of the nation's health and well-being than WorldCom's fraud and the apparent manipulations of Qwest and Global Crossing. The rise and fall of WorldCom and other corporate revelations only now receiving light illustrates why the full participation of all Americans in the regulation of

¹⁷ See *Nondiscrimination in Broadcasting*, 13 *F.C.C. 2d* 766 (1968)

¹⁸ *Nondiscrimination in Broadcasting*, 18 *F.C.C. 2d* 240 (1969).

¹⁹ 47 *U.S.C. § 151* (1996).

telecommunications and information technology is just as essential to the success of the economy, and to democracy, as access to broadcast television was in 1966.

The effects on a host of stakeholders when a telecommunications regulatee perpetuates a fraud of the scale and nature detailed here includes:

- Investors in the telecommunications sector of our economy lose confidence; small investors **lose** their investments. Aware that internal controls and regulatory oversight are so weak that systemic fraud can take down a huge company like WorldCom, investors become hesitant to underwrite new facilities or innovative new services, or to bear the cost of finding ways to more efficiently use excess capacity. Small and large telecommunications enterprises experience difficulty raising capital on reasonable terms. Consequently, the industry as a whole may no longer provide optimal levels and varieties of service.
- Ratepayers will inevitably pay higher prices for telecommunications services. When a major telecommunications company like WorldCom implodes, that company becomes focused on survival -- not on competing effectively. With one fewer aggressive long distance competitor, long distance prices inevitably will increase and service levels inevitably will decline. Those most deeply affected are likely to be residential customers, particularly those residing in the rural and low-income areas that are already the least well served by the telecommunications industry.
- Employees who lost their **jobs** in the wake of corporate scandal will have fewer opportunities to put their unique and specialized skills to good use. "Retraining" may not be an option when there are mouths to feed. Families whose breadwinners lost their jobs will have to leave their homes, their churches, their friends and neighbors and move to other states where there might be some chance of gainful employment. With their pensions and 401(k) plans wiped out, many will have to rebuild from nothing.²⁰

²⁰ For a thorough and poignant discussion of what happens to employees in a bankruptcy, see Shawn Young, "In Bankruptcy, Getting Laid Off Hurts Even Worse: WorldCom's Ex-Employees **Suffer Loss** of Severance, End of Health Insurance," *The Wall St. J.*, Sept. 30, 2002, p. 1 col. 6. Compare the plight of WorldCom's average employee to that of the executives who ran the company. Jon Swartz, Homes of the Rich and Famous, *USA Today*, July 14, 2002 at 1B ("while former WorldCom CFO Scott Sullivan sat stoically before lawmakers last week — amid cries that executives responsible for corporate scandals be jailed — construction continued on his \$15 million lakeside mansion in Boca Raton, Fla."), <http://www.usatoday.com/money/economy/housing/2002-07-15-rich-infamous-homes.htm>

- Potential employees will recognize that the instability of the telecommunications sector does not offer the promise of a long and stable career. Talented people will choose other fields of study; talented entrepreneurs will choose other fields of enterprise. The loss of future brainpower means the loss of future industry competitiveness.
- Honest telecom companies will be deprived of the full competitive value of the services of skilled employees. As noted above, potential newcomers to the field will avoid telecommunications careers, and laid off employees will endure periods of unemployment during which they will not remain current on the technology. Telecom companies innocent of wrongdoing inevitably will bear some of the burden of industry wide employee dislocations.
- Rural consumers and the poor are already inadequately served by telecommunications.²¹ They suffer from racial and economic disparities in online internet access²² and in broadband access.²³ Thanks to the misdeeds of WorldCom and others, they will experience slower growth in access to the telecommunications infrastructure. In particular, the Universal Service Fund and the E-rate program are driven by the volume of industry service, and those service

²¹ *FCC News Release, New Telephone Subscribership (released February 7, 2002) (data as of July, 2004. reporting that telephone penetration for the nation was 95.1%, and for households with incomes over \$60,000 it was 98.9%; but for households with annual incomes below \$5,000 it was only 81.7%. Telephone penetration was 95.8% for White households, 91.3% in Hispanic households and 90.3% in African American households.*

²² See NTIA, A Nation Online: How Americans Are Expanding Their Use of the Internet (released February 6, 2002) (data as of September, 2004, finding that children 10-17 years old exhibited Internet use rates as follows by race: Asian American/Pacific Islanders: 79.4%; Whites: 79.7%; African Americans: 52.3%; Hispanics: 47.8%. Children 10-17 years old in families in the less than \$15,000 income bracket had a 45.7% Internet use level, while children in families in the \$75,000 and above income bracket had an 87.5% Internet use level. Available at: <http://www.ntia.doc.gov/ntiahome/dn/>

²³ Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans (Third Report), FCC 02-33, released February 7, 2002 (data as of June, 2004, finding that high-speed subscribers were reported in 97% of the most densely populated zip codes but in only 49% of the lowest population density zip codes. The FCC did not determine whether more than one resident in these zip codes had high-speed service. High-speed subscribers were reported in 96% of the top one-tenth of zip codes ranked by median family income, but in only 59% of the zip codes with the lowest median family income. The report candidly acknowledged, "some of the low-income zip codes that have high-speed subscribers include businesses or industrial areas of major cities that have large demand for high-speed services. Thus, high-speed availability for residential low-income residents in these zip codes may actually be less prevalent than suggested here."

levels will be sub optimal as investors move their money to other sectors of the economy.

- Communities face economic and social disaster if they were highly dependent on corporate employee payrolls subject to reductions in force, property taxes and corporate citizenship. A prime example is Jackson, Mississippi, the original home of WorldCom. Downtown Jackson still houses much of the back office staff of the company. Today, the city faces a body blow to its economic stability and to its ability to serve the pressing educational and health care needs of its predominately low income, African American population.

No representative of the public without inside knowledge can know precisely the extent of the harm caused by a particular course of fraudulent conduct.²⁴ Only the Commission can investigate and measure that harm.

When major telecommunications enterprises are not being managed responsibly, someone needs to serve **as** a watchdog to ensure that the harm done is cured to the extent possible.²⁵ Further, someone needs to represent the public at the table at which safeguards can be put in place to prevent additional wrongdoing, whether by the same company or by similarly situated ones. **As** the founder of public interest advocacy in broadcasting, OC-UCC. once more believes it imperative to step forward to perform that function in the telecommunications arena.

²⁴ *Even a petitioner to deny is not expected to "fully establish...what it is the very purpose of the hearing to inquire into."* Citizens for Jazz on WRVR, Inc. v. FCC, 775 F.2d 392, 397 (D.C. Cir. 1985).

²⁵ *"Congress acted upon the knowledge that if the potentialities of radio were not to be wasted, regulation was essential."* Nat'l Broad. Co. v. United States, 319 U.S. 190, 213 (1943), and made the FCC its administrative agent with a broad scope of authority to assure that the public interest, convenience and necessity must be served WOKO, Inc. v. FCC, 153 F. 2d 623 (D.C. Cir. 1946), affirmed in FCC v. WOKO, 329 U.S. 223 (1946).

II. THE TELECOMMUNICATIONS INDUSTRY SHOULD BE HELD TO A HIGHER STANDARD DUE TO THE SPECIAL NATURE OF THE INDUSTRY

A. Telecommunications Industry as Central Nervous System

The telecommunications industry plays a vital role in the organization and operation of our modern life and the modern global economy; it has become key to our most treasured value, the First Amendment freedoms enshrined in our **U.S.** Constitution. Indeed, one can hardly overstate its significance to today's everyday social and economic life. Even more difficult is to overstate its likely future importance. According to a recent report of the **U.S.** Department of Commerce, "[b]y 2006, almost half of the **U. S.** workforce will be employed by industries that are either **major** producers or intensive users of information technology products and **services**."²⁶

In a brief period of time, telecommunications has become the central nervous system of the economy. According to FCC Chairman Powell, "Senator Bennett, Chairman of the Senate Special Committee on the Year 2000 Technology Problem, was right on the mark when he called the global communications infrastructure 'the central nervous system of modern society.'"²⁷

Chairman Powell is also on record as saying that "[e]nsuring the health of this nervous system is our critical task."²⁸ The Commission will take a significant step in that direction by initiation of the requested rulemaking and §403 proceeding.

²⁶ **David Henry, et. al**, *The Emerging Digital Economy*, *Economics and Statistics Administration, U.S. Department of Commerce*, **June, 1999**, at <http://www.esa.doc.gov/508/esa/TheEmergingDigitalEconomyII.htm>.

²⁷ **Michael K. Powell**, (serving as a Commissioner of the FCC), *Address at the Year 2000 Contingency Planning for Government Conference*, (**Nov. 16, 1998**) (*emphasis added*), available at <http://www.fcc.gov/Speeches/Powell/spmkgp818.txt>.

²⁸ **Id.**

Advances in telecommunications technologies during the 20th Century were breathtaking. The technological advances and developments caused all economies across the globe to reconsider the fundamental policy assumptions underpinning the historic orthodoxy of rate-regulated monopoly service provision. Liberalization in the telecom sector has literally swept the world as demonstrated by the World Trade Organization's ("WTO") Basic Telecommunications Agreement which took effect in February, 1998 and entailed 69 economies pledging to liberalize their telecommunications markets either fully **or** partially.²⁹

The telecommunications industry is a trillion dollar per year global industry marked by fast innovation, new market entrants and restructuring³⁰ and ever increasing deregulation. New Paradigm Resources **Group, Inc.** calculates that "over \$150 billion in telecommunications capital expenditures resulted from" enactment of the Telecommunications Act of 1996, representing

²⁹ Fourth Protocol to the GATS. Fourth Protocol to the General Agreement on Trade in Services (WTO 1997), 36 I.L.M. 354, 366 (1997). *The WTO Basic Telecommunications Agreement, which is incorporated within the General Agreement on Trade in Services and is **not** a stand-alone agreement "seek to promote global markets for telecommunicationss so that consumers may enjoy the benefits of competition."* Vodafone Airtouch, PLC, and Bell Atlantic Corporation, 15 FCC Rcd 16507, 16512 (2000). *A brief summary of the agreement can be found in* Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, First Order on Reconsideration, IB Docket No. 96-111, 15 FCC Rcd 7207, 7208-09, para. 3 (1999).

³⁰ "[O]f the approximately 300 'facilities based' CLECs in operation three years ago, only about 70 remained as of early 2002." Larry F. Darby, Jeffrey A. Eisenach, Joseph S. Kraemer, *The CLEC Experiment: Anatomy of a Meltdown, Periodic Commentaries on Policy Debate, Progress on Point*, Sept., 2002 (the "Darby Report"?). *The Darby Report concludes, "the failure of the CLECs has not slowed the development of competition for local services; and, conversely, that CLECs did not fail because of a lack of growth in the market for competitive services – they failed in spite of it."* Id. at p. 2.

“2% of all U.S. capital spending and **28%** of all communications spending by all market participants.”³¹

Because of the special nature of the industry, the total negative effect of telecommunications corporate wrongdoing and fraud will continue to be felt throughout the telecommunications industry and the U.S. (indeed the global) economy, for years, if not decades to come. Indeed, WorldCom’s fraud will “ripple through the telecom sector to the corner store, gashing local businesses and hampering economic recoveries.”³²

Not unlike the railroads of yesteryear, today’s telecommunications industry is globalizing markets, reducing transactions costs, expanding productivity, and directly increasing economic well being. The global telecommunications networks are rapidly becoming, if they have not already become, the new trade routes.

Technological advances are constantly reducing costs and expanding capabilities in telecommunications. These developments further drive down costs and expand capabilities not only in the telecom sector but with respect to complementary goods and services as well. So ubiquitous is the use of telecommunications in the production and marketing of goods and services that telecommunications is fast becoming an integral part of the production process, part of the product firms supply either as a value-added service, or as part of the product itself, e.g. telephonic order entry and credit validation and customer-service telephone lines.

³¹ Measuring the Economic Impact of the Telecommunications Act of 1996: Telecommunications Capital Expenditures (1996-2001), *October* 2002.

³² *Jon Swartz*, WorldCom Woes Ripple Throughout Economies, *USA Today*, *Aug. 9*, 2002 at *1B*.

In but a few brief remarks, Chairman Powell has encapsulated the importance of today's telecommunications industry:

The Year 2000 Problem has clearly demonstrated the inter-connectivity and inter-dependency of the communications industry. Consider that hundreds of millions of users **of** communications services throughout the country transmit voice, data and video information upon the domestic communications infrastructure that is composed of the wireline telephone networks, cellular and PCS networks, satellite constellations, broadcasting and cable television systems, and the **Internet**.³³

* * *

The communications infrastructure—like energy—is one of a handful of basic building blocks upon which all other industries and programs rest. For example, critical programs, such as Defense Department command and control, Federal Reserve electronic fund transfers, and Medicare benefit payments, depend upon this ubiquitous infrastructure...³⁴

* * *

Unlike many other industries, telecommunications must operate all day, each and every day, without any downtime?

Recognizing the importance of today's telecommunications industry, Chairman Powell has likewise recognized that "[t]here is no greater sacrosanct role, either for carriers or the Commission, than to ensure the critical continuity of operations of those vital services for consumers, and critical consuming users, like the federal government"...³⁶ To properly fulfill that role, the Commission must initiate the requested rulemaking and investigatory proceedings.

³³ Michael K. Powell, (serving as a Commissioner of the FCC), *Address at the Year 2000 Contingency Planning for Government Conference*, (Nov. 16, 1998), available at: <http://www.fcc.gov/Speeches/Powell/spmcp818.html>.

³⁴ Id

³⁵ Id. Quoting from: Frances Cairncross, *Survey on the Year 2000 Problem*, *The Economist*, Sept. 19, 1998.

³⁶ Remarks of Michael K. Powell, Chairman, FCC, Press Briefing on WorldCom Situation, 7/16/02, *available at*: <http://www.fcc.gov/Speeches/Powell?2002/spmcp209.html>.

Moreover, as telecommunications moves further and further toward becoming classified as an *information* service, providers are increasingly in a position to exercise control over the content as well as the means of our communication; the things we can say, the information we can access and even the thoughts we can think will be substantially affected if providers can restrict access to information. When a telecommunications service becomes reclassified as an “information service,” providers have incredible power -- far more power than broadcasting which was, after all, always a one-way medium. Control over the lines serving and access to the Internet carries with it the potential to affect our interaction with others, the essence of the First Amendment. Therefore, character must be the *sine qua non* of entry into this business.

The WorldCom case has already rung the alarm from other captains of the telecommunications industry. “The accounting fraud that brought down WorldCom and tainted a number of telecommunication companies has left ‘a lingering stench that has poisoned our industry ...’”³⁷ Simultaneously with the filing of this petition, OC-UCC. has filed with the Commission its Informal Objection to Assignment Applications (“Informal Objection”) setting out in greater detail WorldCom’s fraud, misrepresentations and accounting irregularities. OC-

(Continued. . .)

³⁷ Stacy Cowley, Sprint CEO blasts WorldCom, *Network World/Fusion*, Oct. 2, 2002 (quoting Sprint chairman and chief executive officer William Esrey in a keynote address at Internet World, Fall 2002) at <http://www.nwfusion.com/news/2002/1002sprintceo.html>. “Pressure to keep up in the booming market, and to match the growth claimed by companies that later turned out to be cooking the books, pushed companies into unreasonable expansion, foolish investments and unsustainably low pricing in a bid to grab customers at any cost...” Id. Esrey “expects the effects of those business decisions to continue haunting the industry for many years.” Id. “We kept asking ourselves what we were doing wrong because we couldn’t generate the numbers WorldCom reported, . . . As we discovered, the margins were a hoax but the devastating effect on our industry was very, very real.” Id.

UCC. incorporates the recitation of those facts into this petition by reference, as if fully set forth herein to provide a vivid example of the type of behavior the Commission must preclude from the telecommunications sector.

III. WORLDCom'S BEHAVIOR AS A COMMISSION LICENSEE AND PERMITEE REQUIRE A COMMISSION INVESTIGATION AND RULEMAKING

A. The Behavior of WorldCom's Senior Management Requires an Investigation and the Institution of Rulemaking

In the history of the Communications Act it is hard to recall any parallel to the massive fraud and misrepresentation that has been visited upon the American people and the Commission by WorldCom and its management. Almost daily revelations have demonstrated that, in its desire to artificially inflate its stock value, WorldCom management at several levels made knowingly false verified statements to the public at large and to a variety of federal regulatory agencies, including the Commission. The extent of the fraud and the depth of the misrepresentation are still not fully known, despite several ongoing investigations and guilty pleas by top-level management.³⁸ Much of the detail of what is known to date is presented more fully in OC-UCC's contemporaneously filed Informal Objection and incorporated by reference herein.

Taking only what we know already on face value, there is a clear *prima facie* demonstration of serious and pernicious effects on our nation's telecommunications infrastructure. The situation literally begs for the Commission to exercise its obligations under the Communications Act to promulgate new rules, standards and policing mechanisms to assure that WorldCom's behavior cannot be replicated by others in the future. Unfortunately, recent

³⁸ See Section V, *infra*.

revelations about the accounting practices of Qwest and Global Crossing may demonstrate that other abuses have occurred in other companies that similarly cry out for remedies. In order to comprehensively address the situation the Commission must be clear in its authority with a record that clearly supports its actions. To be in that position, it should use the tools Congress gave to it for that very purpose; it must conduct a full investigation targeted at matters relevant to telecommunications and institute a full notice and comment proceeding in compliance with the requirements of the Administrative Procedure Act.³⁹

IV. THE FCC HAS THE AUTHORITY TO ESTABLISH STANDARDS FOR CONDUCT AS THE NATION'S STEWARD OF THE TELECOMMUNICATIONS INDUSTRY

A. The Commission Has Clear Authority to Establish Such Standards

The Commission was established “[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio”⁴⁰ and is specifically authorized to promulgate such rules or issue such orders “as may be necessary in the execution of its functions.”⁴¹

Section 201(b) of the Communications Act clearly obligates carriers subject to regulation under Title II of the Act to act in a just and reasonable fashion.⁴² Furthermore, carriers are fully

³⁹ 5 U.S.C. § 551 et. seq.

⁴⁰ 47 U.S.C. § 151.

⁴¹ 47 U.S.C. § 154(i).

⁴² “All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification or regulation that is unjust or unreasonable is hereby declared unlawful.” 47 U.S.C. § 201 (b) (emphasis added).